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Friday, November 25, 2011

Dear Sir/ Madam,

**RE: Corporations Amendment (Future of Financial Advice) Bill 2011**

We thank Parliamentary Joint Committee on Corporations and Financial Services for the opportunity to provide comments on *Corporations Amendment (Future of Financial Advice) Act 2011 (the Bill)*. We hope to add value and substance to the consultation process.

The Australasian Securities Dealers Association (ASDA) congratulates Government on initiating positive steps towards enhancing retail consumer protection in Australia. We believe the overarching goals to be progressive and positive for consumers and the entire financial service's industry.

In our submission to Treasury on the two consultation papers we addressed specific parts of the exposure drafts that we felt warranted further consideration and we note that some amendments have been omitted from the Bill read into parliament on October 13<sup>th</sup>, 2011.

ASDA notes that the explanatory memorandum for the Corporations Amendment (Further Future of Financial Advice Measures) Act 2011 exposure draft specifically stated that the "underlying objective is to build trust and confidence in the financial planning industry". ASDA and it's Australian Financial Service's License (AFSL) members are increasingly concerned about an apparent disconnect between licensing and operations in the provision of financial services in Australia.

ASDA believes the bill could be further enhanced by a high level review of licensing conditions currently issued by ASIC upon application by an potential AFSL. As the explanatory notes suggest, the barriers to licensing are relatively low and whilst we support the proposed Bill in relations to ASIC's powers and the charging of ongoing fees, there is a structural issue in licensing that hinders ASIC identifying those AFSL's that provide broad or portfolio investment advice to retail clients and those that provide specialist advice.

We hope that the committee agrees that a retail consumer should have a better chance of becoming a wholesale investor, and potentially of greater value to the Australian economy when given appropriate specialist advice. The flow on benefits from this overarching objective to the Australian economy is much greater than the value of single pieces of advice. ASDA believes this can, at least in part, be achieved through industry led standards, disclosure and meaningful training.

We ask the committee to consider if an additional act may be more appropriate than incorporating the proposed changes into the Corporations Act (2001), and then applying carve outs to specific industry subsets? As noted in our previous submissions to treasury, identifying these subsets through licensing or membership of private companies is either difficult or inappropriate.

At present there is no license condition for financial planning. An AFSL that is engaged in financial planning or broad financial advice may have common license conditions such as superannuation, deposit products, insurance products and securities & derivatives however they may not be using all of these conditions in the provision of their core services.

Retail consumers should not be asked to read an AFSL's license conditions of an AFSL they seek advice from in detail. ASDA believe would like to know if they are being advised by someone that plans across their entire investment portfolio, or can someone that offers highly specialised advice and in what product classes without a trawl of the AFSL's product disclosure statement (PDS). ASDA is supportive of full disclosure by AFSL's and authorised representatives of the products and services that they offer in a consumer friendly manner.

ASDA members are interested in a solid consumer protection regime, where compliance costs are appropriate to an AFSL's scale and complexity. ASDA conducts benchmarking

activities across Australia's AFSL's. We believe it may be more relevant for either the regulator or Treasury to undertake some research similar to the pricing of the opt-in costing around the cost of regulation and changes to operational conditions.

We request that the committee discuss the virtues of commissioning such research that will provide additional guidance on compliance costs and obligations to AFSL's of varying sizes and the competition implications. The ever increasing reporting requirements, not only to ASIC but also AUSTRAC and other entities are adding significant cost layers to small business.

ASDA's members, and the industry as a whole need a certain operating environment as opposed to one that has cascading cost implications for governance, administration, technology and operations. Small business and competition is fundamental to Australia's economic wellbeing. Whilst we assume that large financial institutions may be able to absorb the aforementioned implications as a percentage of revenue more readily, we would like to think that any amendments will not disadvantage independent boutique AFSL's and their 2.5 Million client accounts.

There are over 5000 AFSL's in Australia in 2011 with licenses being issued and relinquished weekly. ASDA believes the Bill supports the regulator (ASIC) powers to effectively supervise all AFSL holders and deter unwanted behaviours and practices from the financial services industry. ASDA and its members are fully supportive of these measures.

ASDA and its members have found ASIC to be engaging and diligent in its operations, especially since the McKinsey review into its structure and operations in 2008. Indeed we have found them most helpful in providing areas of focus for our members operations through the Markets and Supervision teams based in Sydney, Melbourne and Perth.

Whilst we understand that the Government may feel the need to give ASIC such sweeping powers, we are concerned that appropriate check and balances are not in place to prevent malicious pursuit of advisers or licensees under their supervision. Most enforcement agencies throughout the developed world have an internal agency or overseeing body that has the ability to conduct investigations.

Banning orders, enforceable undertaking and disqualifications are handed out by ASIC and in most cases with good reason. We do however see that if such a malicious pursuit did

occur under 920(1A)(d) then the tarnished image of the adviser or AFSL would be significant.

If that pursuit did occur and was unsuccessful, we imagine that the financial and public perception implications for the regulator would be equally significant. We ask that the committee suitably address that safeguards are sufficiently in place and have been implemented prior to the passing of the Bill into legislation.

ASDA would be willing to make a presentation to the committee in person during the course of your inquiry should you require any further information. Please feel free to contact our association if you would like any further information on our submission or any other matter.

Yours sincerely

Jamie Coote  
Chair

## Supplementary Information

### AFSL Statistics

In total there are approximately 5000 AFSL licensees in Australia and an additional 61,000 businesses or individuals providing financial products to Australian consumers as Corporate Authorised Representatives (CAR's) of the AFSL's.

The table below illustrates the weighting of popular license conditions in Australia.

| Type of Licence             | Total in Australia |
|-----------------------------|--------------------|
| Securities Wholesale        | 2869               |
| Securities Retail           | 2064               |
| Insurance                   | 2749               |
| Retirement Savings Accounts | 1179               |
| Superannuation              | 1705               |

There are 90 odd Participants of ASX of which 42 are referred to as full service brokers and are represented by the Stockbrokers Association of Australia (SAA).

There are an additional 480 AFSL holders that offer specialised retail securities advice with 2064 licences on issue that offer "broad" investment to advice as well as specialist MLS advice to retail clients.

## About ASDA

The Australasian Securities Dealers Association (ASDA) is governed by its [committee of management](#) who come from our member firms. ASDA is committed to a well regulated & transparent market for financial products and works with Government, regulatory bodies and industry service providers on a wide range of issues.

Our [members charter](#) helps define what we feel a professional financial service's firm should be. The 250+ businesses that we represent are engaged in providing advice on pre-IPO and market listed securities to wholesale and retail client bases as well as broad investment planning activities. Our members run highly specialised businesses (predominantly independent boutique AFSL's) that are predominantly not members of ASX.

ASDA believes that the ever increasing number of boutique AFSL's who are responsible for an increasing percentage trades occurring on the ASX and other execution venues globally deserve a low cost & efficient operating environment. Our members have high levels of daily interaction with their staff over compliance and operational issues, and have generally been trained by ASX member firms.

Our figures show that boutique AFSL's either led or played an active role in 43% of all IPOs in Financial Year 2011. Additionally numerous capital raising's have been facilitated by our members for Australian companies with over \$3.5 raised in FY10-11.

The significance of the boutique AFSL role is of course greater than just these statistics as non-ASX Participants are more likely to assist capital raising by small to medium business, the growth engine of the economy, and have far greater reach to retail investors.

Whilst many in the community and clients would recognise our members as "stockbrokers" (not understanding the technical differentiation) they are appreciative of the high level of client interaction that comes from dealing with a boutique AFSL.

More information on ASDA can be found at:



**ASDA**  
securities.asn.au